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SERVICE DATE – LATE RELEASE MAY 25, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 259X)

TENNESSEE RAILWAY COMPANY–ABANDONMENT EXEMPTION–  
IN ANDERSON AND CAMPBELL COUNTIES, TN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: May 25, 2005

Tennessee Railway Company (TNR), a wholly owned subsidiary of Norfolk Southern Railway Company (NS), filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 14.04-mile line of railroad between milepost TE-27.96 at Nick's Creek and milepost TE-42.00 at Devonia, in Anderson and Campbell Counties, TN. Notice of the exemption was served and published in the Federal Register on January 19, 2005 (70 FR 3103). The exemption was scheduled to become effective on February 18, 2005, unless stayed by the Board, or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by January 31, 2005.

On January 31, 2005, the National Coal Corporation (NCC) filed a formal expression of intent to file an OFA, automatically staying the effective date of the exemption until February 28, 2005. On February 1, 2005, NCC requested that NS, on behalf of TNR, provide the information prescribed in 49 CFR 1152.27(a). NCC also asked that the Board set the due date for an OFA 30 days after the carrier provides the requested information. In a response filed on February 15, 2005, TNR objected to NCC's request. TNR also asked for an additional 60 days enable it to conduct an appraisal to determine the net liquidation value of the line.

In a decision served on February 22, 2005, the Board required that TNR provide the requested information to NCC, within 60 days, to enable the offeror to submit an OFA. The decision also set the due date for an OFA at 30 days after TNR provided the information to NCC. Lastly, the Board required that TNR notify the Board notice when it had provided the data to NCC.

On April 27, 2005, TNR filed, under seal, a copy of the land appraisal and other information that had been provided to NCC on April 19, 2005, in accordance with the Board's February 22 decision.

On May 20, 2005, NCC timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$866,386.00, consisting of \$17,900.00 for real estate and \$848,486.00 for the net salvage value of the rail assets on the line.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). TRC initially claimed that NCC was not financially responsible. However, in its OFA, NCC provided evidence showing that it has financial resources to acquire and operate the line. NCC is thus found to be financially responsible.

NS's appraisal values the land at \$17,900.00 and the net salvage value of track and materials at \$1,007,368.00. NCC's offer accepts NS's land value and the gross value of the rail assets. However, NCC disagrees with the estimated removal costs in NS's appraisal. NS's appraisal estimates removal costs at \$248,883. NCC asserts that NS's estimate is not supported or explained. In its OFA, NCC submits an analysis prepared by an engineer, estimating removal costs at \$407,765. Consistent with 49 CFR 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), NCC has explained the basis for the difference between its lower estimate for the line and the carrier's estimated value for the line. In its OFA, NCC states that its offer is conditioned on: (1) continued operation by TNR, NS or by a purchaser of a connecting line that is the subject of an abandonment exemption petition in Tennessee Railway Company–Abandonment Exemption–Between Oneida and Nicks Creek, TN, Docket No. AB-290 (Sub-No. 260X); and (2) TNR, NS or a successor operator entering into a mutually agreeable purchase, interchange, switch fee or rate division and other applicable agreements.

Because NCC is financially responsible and has offered assistance, the effective date of the exemption authorizing the abandonment will be postponed.

The Board's regulations contemplate that the carrier and a financially responsible person will reach an agreement setting terms and conditions of purchase; but if they do not, either party may request the Board to do so. 49 CFR 1152.27(g). Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$18,400.<sup>1</sup> An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

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<sup>1</sup> The filing fee for a request to set terms and conditions increased to \$18,400, effective May 6, 2005. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services–2005 Update, STB Ex Parte No. 542 (Sub-No. 12) (STB served Apr. 6, 2005).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If NCC and TNR cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before June 24, 2005. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary